101

07/12/07

**HIGH COURT OF CHHATTISGARH: BILASPUR**

**SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag. CJ**

**Writ Petition (T) No. 7083 of 2007**

**PETITIONERS**

1. M/s ABS Metals (P) Ltd., 129-A Light Industrial Area, Bhilai – Through its Director, Anil Kumar Agrawal, S/o Late Shri B.L. Agrawal, Aged about 45 years, R/o. 10, Old Motilal Nehru Nagar, Bhilai, Distt. Durg (C.G.)
2. Smt. Uma Agrawal, W/o Shri Anil Kumar Agrawal, Aged about 43 years, Director, M/s ABS Metals (P) Ltd., 129-A Light Industrial Area, Bhilai, R/o 10, Old Motilal Nehru Nagar, Bhilai, Distt. Durg (C.G.)

**VERSUS**

**RESPONDENTS**

1. Union of India – Through The Secretary, Ministry of Finance, New Delhi
2. The Member, Central Board of Excise and Customs, Government of India, Ministry of Finance, Department of Revenue, New Delhi.
3. The Chief Commissioner (Bhopal Zone), Customs and Central Excise, 48 Administrative Area, Arera Hills, Hoshangabad Road, Bhopal (M.P.)
4. The Commissioner, Customs and Central Excise, Central Excise Building, Dhamtari Road, Tikra Para, Raipur (C.G.)
5. The Deputy Commissioner, Customs and Central Excise, Division – II, Bhilai, Distt. Durg (C.G.)

Writ Petition under Article 226 of the Constitution of India

Present: Shri P. Diwakar, Sr. Advocate with Shri Adil Minhaj, counsel for the petitioners.
Shri Manish Sharma, counsel for Union of India.

**ORAL ORDER**
**(Passed on 5th December, 2007)**

A preliminary objection has been raised regarding the maintainability of the petition on the ground that the alternative efficacious remedy of filing appeal is available to the petitioner under Clause (c) of sub-Section (1) of Section 35-B of Central Excise Act, 1944. It has been submitted on behalf of Union of India that the order has been passed by the Member, Central Board

(102)

of Excise and Customs. He relies upon the part of the notification under Central Excise Rules which reads as follows:-

> "[2] Evasion – Deterent action against tax evaders-Member (C.E.), C.B.E. & C. authorized to issue restriction order.- In pursuance of rule 12 CC of the Central Excise Rules, 2002, and rule 12AA of the CENVAT Credit Rules, 2004, made under the Central Excise Act, 1944 (1 of 1944), the Central Board of Excise and Customs authorizes Member (Central Excise), Central Board of Excise and Customs to issue orders in terms of Notification No. 32/2006-C.E. (N.T.), dated 30th December, 2006."

> "(3) An officer authorized by the Board shall examine the recommendations received from the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence and issue an order specifying the type of facilities to be withdrawn or type of restrictions imposed, along with the period for which said facilities will not be available or the period for which the restrictions shall be operative."

Learned counsel for the petitioners submits that the impugned order has not been passed under the provisions of law. However, he did not indicate that under which provision of law the order has been passed.

In the light of above discussion, it has been submitted that the Member, Board is authorized to pass an order on behalf of Central Board of Excise and Customs. Therefore, the order passed by the Member amounts to the order passed by the Board.

I do not find force in the argument of the petitioners. The writ petition is thus disposed of on the ground of availability of alternative remedy.

Sd/-
Ag. Chief Justice

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